

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

JAMES E. SMITH,

:

Petitioner(s),

:

Case Number: 1:08cv350

vs.

:

District Judge Susan J. Dlott

WARDEN, LEBANON CORRECTIONAL  
INSTITUTION,

:

:

Respondent(s).

:

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on October 2, 2008 a Report and Recommendation (Doc. 9). Subsequently, the petitioner filed objections to such Report and Recommendation (Doc. 10).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

Accordingly, respondent's motion to dismiss (Doc. 7) is **GRANTED**, and petitioner's petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DISMISSED** with prejudice as time-barred.

A certificate of appealability will not issue with respect to any Order adopting this Report and Recommendation to dismiss the petitioner with prejudice on procedural statute of limitations grounds, because under the first prong of the two-part standard enunciated in *Slack v. McDaniel*,

529 U.S. 473, 484-85 (2000), “jurists of reason” would not find it debatable whether this Court is correct in its procedural ruling.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation will not be taken in “good faith” and, therefore, **DENIES** petitioner leave to proceed on appeal *in forma pauperis* upon showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

IT IS SO ORDERED.

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\_\_\_\_s/Susan J. Dlott\_\_\_\_  
Susan J. Dlott  
United States District Judge